

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
(Northern Division)

UNITED STATES OF AMERICA, )  
                                )  
Plaintiff,                 )  
                                ) Case No. 3:22-cv-00686-HTW-LGI  
                                )  
v.                            )  
                                )  
THE CITY OF JACKSON, MISSISSIPPI, )  
                                )  
Defendant.                 )  
\_\_\_\_\_ )

**JOINT MOTION FOR A STIPULATED  
ORDER FOR CONFIDENTIALITY OF  
SETTLEMENT DISCUSSIONS**

The parties in this action—Plaintiff the United States of America, on behalf of the United States Environmental Protection Agency (“United States”), and Defendant the City of Jackson, Mississippi (“City”)—jointly move this Court to enter the proposed Stipulated Order on Confidentiality of Settlement Discussions (“Order”), submitted herewith, to ensure the confidentiality of settlement discussions. While not parties in this action, the Court-appointed Interim Third-Party Manager (“ITPM”) and the State of Mississippi, by and through the Mississippi State Department of Health (“MSDH”) and by and through the Mississippi Commission of Environmental Quality, acting through the Mississippi Department of Environmental Quality (“MDEQ”), are expected to participate in some or all of the United States and the City’s settlement discussions. Thus, the ITPM and Mississippi are signatories to the proposed Order and agree to be bound by the proposed Order, if entered by the Court.

In support of their Motion, the United States and the City submit the following:

1. The United States has civil claims against the City related to the Safe Drinking Water

Act, 42 U.S.C. § 300f *et seq.* (“SDWA”), *see* Complaint [Dkt. No. 1].

2. On November 29, 2022, this Court entered an Interim Stipulated Order, which among other things temporarily stayed litigation of this action to allow the parties to “attempt to negotiate a judicially enforceable consent decree.” *See* Interim Stipulated Order [Dkt. No. 6 at p. 3].

3. Pursuant to SDWA Section 1413, 42 U.S.C. § 300g-2, MSDH has primary responsibility for the implementation and enforcement of the public water supply program in the State of Mississippi. [Dkt. No. 6 at p. 1.] Accordingly, MSDH is a signatory to the Interim Stipulated Order. [Dkt. No. 6 at p. 32.]

4. In a separate action filed in the Southern District of Mississippi, the United States and Mississippi, by and through MDEQ, have alleged claims pursuant to the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, which resulted in a 2013 Consent Decree (“Sewer Consent Decree”) in *United States of America and the State of Mississippi v. City of Jackson, Mississippi*, Case No. 3:12-cv-790-TSL-RPM (S.D. Miss.) (the “CWA case”) [Dkt. No. 10], which concerns the City’s sewer system. The United States and the City are currently in negotiations about the City’s compliance with the Sewer Consent Decree.

5. The United States’ SDWA claims, CWA claims, and interests in enforcement of the Sewer Consent Decree are hereinafter referred to as “Federal Claims.”

6. The interests of Mississippi, by and through MSDH and MDEQ, in the settlement discussions, enforcement of the SDWA, and the CWA case are hereinafter referred to as “State Interests.”

7. A confidentiality order effective as of October 31, 2021, remains in effect in the CWA case. *See United States of America and the State of Mississippi v. City of Jackson, Mississippi*,

Case No. 3:12-cv-790-TSL-RPM (S.D. Miss.) [Dkt. No. 19] (“Sewer Confidentiality Order”).

The Sewer Confidentiality Order preserves the confidentiality of settlement communications among the United States, Mississippi, and the City regarding the Sewer Consent Decree, the CWA, and the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.* (“MAWPCL”); however, it does not pertain to settlement communications regarding the SDWA and the Mississippi Safe Drinking Water Act of 1997, Miss. Code Ann. § 41-26-1 *et seq.*, which are the subject of this action.

8. By nature of its role, the ITPM has information and opinions that may be relevant to the settlement negotiations on the SDWA claims and may also affect the CWA claims or enforcement of the Sewer Consent Decree. Further, a settlement of the SDWA claims may affect the ITPM’s work under this Court’s Interim Stipulated Order [Dkt. No. 6].

9. Thus, the United States and the City seek a confidentiality order in this action to ensure the confidentiality of settlement discussions about the Federal Claims and State Interests (collectively, the “Subject Claims”).

10. The United States and Mississippi share a close and common interest in the enforcement of the Subject Claims and believe that meaningful enforcement discussions will require information exchanges and other communications and accordingly agree that the sharing of information by their employees, consultants, agents, and counsel will further their common enforcement goals.

11. The United States and Mississippi recognize and agree that the written and oral communications between them related to settlement negotiations with the City, enforcement, or any other matters related to potential enforcement actions, are being made in anticipation of litigation.

12. The United States, Mississippi, the City, and the ITPM recognize that meaningful settlement negotiations will require the exchange of information and opinions, offers of settlement or compromise, and other communications among them.

13. The United States, Mississippi, the City, and the ITPM agree that maintaining the confidentiality of Settlement Communications (as defined in the proposed Order) would generally facilitate the free exchange of information, the expression of unvarnished opinions, and enhance the likelihood of a successful outcome among them.

14. The United States, Mississippi, the City, and the ITPM wish to provide for appropriate protection covering any privilege that could be asserted and the confidentiality of exchanges during the course of such discussions. They also recognize that there may be some overlap in their discussions between this matter and the CWA case. Therefore, the United States, Mississippi, the City, and the ITPM believe it is appropriate and prudent to have complementary confidentiality orders in both proceedings. To further ensure that discussions remain confidential, the United States, Mississippi, and the City will be filing a stipulation in the CWA case seeking to amend the confidentiality order in that case to extend to and include the ITPM.

15. As the movants and the parties in this action, the United States and the City request relief from the obligation to file a memorandum brief in support of this motion. *See L. U. Civ. R. 7(b)(4).*

16. The non-party signatories to the proposed Order—Mississippi, by and through MSDH and MDEQ, and the ITPM—have reviewed and consent to the substance and form of the proposed Order.

17. The United States and the City respectfully request the Court grant their motion for a confidentiality order.

FOR THE UNITED STATES OF AMERICA:

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Dated:

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Dated: 2/16/23

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